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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/722,610	11/26/2003	Gerald James Hess JR.	4069 / GETS 5294.2	7096

321 7590 12/06/2004

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER


LE, MARK T

ART UNIT	PAPER NUMBER
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3617

DATE MAILED: 12/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/722,610	Applicant(s) HESS ET AL.	
	Examiner Mark T. Le	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/22/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the amendments filed on October 22, 2004. Applicant's amendments and remarks have been carefully considered.
2. Claims 25-27, 31-33, 37-39, 49-51, 55-57 and 61-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Montgomery (US 5,950,967).

Montgomery discloses a system for controlling a consist, as recited in the instant claims, including master control 120 for providing different power/brake operating modes to different locomotives 14, 16 and 18 in a consist; wherein, the operating modes of the different locomotives of Montgomery are determined as a function of at least the current throttle settings, the current brake settings (braking capacity), the position of the consist as indicated by a GPS 130, and the consist definition and speed (performance profile).

3. Claims 28, 34, 40, 43-46, 52, 58 and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery (US 5,950,967).

Montgomery is applied above.

Regarding the instant claimed power operating mode of a locomotive in which a crew is riding being less than the power operating mode of a locomotive in which a crew is not riding, note that in Montgomery, the power operating modes of master locomotive 14 on which a crew is on and of the slave locomotives 16 and 18 on which a crew is not riding, are constantly varied in accordance with the conditions and positions of the locomotives. It would have been obvious to one skilled in the art that there would be times when the power requirement for master locomotive 14 would be less than that of

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other locomotives 16, 18; and accordingly, the power operating mode for the master locomotive on which a crew is on would be set to be less than that of the other locomotives, as broadly claimed.

Regarding the instant claimed power operating modes being a function of a location of a crew member, note that the position of the master locomotive in the consist of Montgomery is the same as the location of a crew member, and that the power settings for the power operating modes of Montgomery are made also on the basis of the position and other conditions of the master locomotive; therefore, the instant claimed power operating modes of Montgomery are inherently a function of the location of a crew member, as broadly recited in the instant claims.

4. Claims 29-30, 35-36, 41-42, 47-48, 53-54, 59-60 and 65-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montgomery (US 5,950,967) in view of either Curtis (US 5,969,643) or Spigarelli (US 4,401,035).

Montgomery is applied above.

Regarding the communication link being a wired or wireless arrangement, note that wire and wireless communication links are well known in the art. Note for example Curtis and Spigarelli.

In view of either Curtis or Spigarelli, it would have been obvious to one skilled in the art to use either one of the well known types of communication links, e.g. similar to that of either Curtis or Spigarelli, for forming the communication links in the system of Montgomery for achieve expected advantages of the respective one of the well known wired or wireless arrangement.

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5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 703-308-3663. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner
Art Unit 3617

mle
12/2/04